IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CR No. 471 of 2002.

Date of Decision: December 14, 2007

Smt. Urmila Devi … Petitioner

Versus

Ashok Kumar & anr. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner. : Mr.N.K.Sood, Advocate.

For the Respondent(s) : Mr. Bhupender Gupta, Sr. Advocate
With Mr. Neeraj Gupta, Advocate.

Deepak Gupta, J

This revision petition under Section 24(5) of the H.P. Urban Rent Control Act, 1987 (hereinafter referred to as the Act) is directed against the judgment of the Appellate Authority (III), Kangra at Dharamsla in Rent Appeal No.14-K/2001 decided on 19.3.2002 whereby he has set aside the order of eviction passed by the learned Rent Controller, Palampur in Rent Case No. 15/97 vide judgment dated 18.6.2001.

Briefly stated the facts of the case are that the petitioner (hereinafter referred to as the landlady) filed an eviction

petition against the respondents on various grounds including the following:-

> "(iii) That the tenant has impaired materially the value and utility of the building by breaking the doors and windows by damaging the walls."

The learned trial Court rejected all other grounds raised by the petitioner/landlady but ordered eviction of the tenants on the ground that they had materially impaired the value and utility of the building. The tenants went in appeal and the learned Appellate Court held that the learned Rent Controller had looked into the evidence which was much beyond the pleading and had been influenced more by the condition of the building while ordering the eviction of the tenant.

I have heard Shri N.K.Sood learned counsel for the petitioner and Shri Bhupender Gupta, Senior Advocate assisted by Shri Neeraj Gupta, Advocate, learned counsel for the respondents.

The learned Rent Controller totally misunderstood the provisions of the Act. The pleading of the petitioner/landlady was clear that she was seeking eviction on the ground that the tenants had materially impaired the value and utility of the

building by breaking doors and windows and by damaging the walls. This has not been proved on record.

It is a well settled law that that the landlord must not only prove that the tenants have made the changes but must also proved that the said changes have resulted in materially impairing the value and utility of the building. The mere fact that the premises were not in a good condition is not a ground to hold that the changes have resulted in the value and utility of the building being impaired. Even assuming for the sake of arguments that the landlady has proved on record that the tenants removed the doors and windows of the building, it was for the landlady to have further proved that this had materially impaired the value and utility of the building. These facts were not proved by the petitioner/landlady.

The learned Appellate Authority has rightly held that the petitioner/landlady has failed to prove that the value and utility of the demised premises had been materially affected by breaking doors and windows.

There is no merit in this revision petition which is accordingly dismissed.

December 14, 2007 (Deepak Gupta),J.

s.